CRL A 388/04

The 3rd Appellant/Accused No.3 Viz., Raja was directed to be released on bail by the order of this Court dated 6.7.04 and made in Crl.MP No. 7001/04 in Crl.A 388/04.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.07.2006

CORAM

THE HONOURABLE MR. JUSTICE R.BALASUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE M.JEYAPAUL

CRL. APPEAL NO. 388 OF 2004

1. Vijayan
2. Chitti Babu
3. Raja
4. Udhaya @ Udhayakumar
5. Krista @ Krishnan
6. Giri
7. Neelakandan .. Appellants/Accused Nos. 1 to 7

- Vs -

State by
The Inspector of Police
H-6, Dr. Radhakrishnan Nagar
Police Station, Chennai. .. Respondent / Complainant
(Crime No. 1045/2000)

Criminal Appeal filed against the conviction and sentence passed by the learned Addl. Sessions Judge (Fast Track Court No.3), Chennai, in S.C. No.282 of 2001 dated 18.12.2003 as stated therein.

For Appellants : Mr. V.Gopinath, SC, for
Mr. L.Mahendran

For Respondent : Mr. N.R.Elango, APP

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY R.BALASUBRAMANIAN, J.)

Appellants, seven in number, are challenging their conviction in S.C. No.282 of 2001 on the file of the Additional Sessions Judge

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(Fast Track Court III), Chennai. A-1, A-2 and A-4 to A-7 were charged under Sections 147, 148, 302 and 506 (II) IPC while A-3 was charged under Sections 147, 148, 302 read with 149 and 109 and 506 (II) IPC. The convicted accused have filed this appeal before this Court. Heard Mr.V.Gopinath, learned senior counsel for the appellants and Mr.N.R.Elango, learned Addl. Public Prosecutor appearing for the State.

2. The prosecution case is that at about 6.00 p.m. on 12.11.00, when Chitti - the deceased in this case, was on his way to the police station to give a complaint, about the earlier occurrence that took place at about 3.00 p.m. on that day in his house, in the company of P.W.s 1 to 3, was brutally attacked by the accused resulting in his death and, therefore, punishable as referred to above. To substantiate their case, the prosecution examined P.W.s 1 to 15 besides marking Exs.P-1 to P-42 and M.O.s 1 to 8. The defence neither brought in any oral nor documentary evidence.

3. P.W.1 is the wife of the deceased. She knows the accused. At about 3.30 p.m. on 12.11.00, all the accused came to her house and found fault with her husband in being an informant to the police about the illegal activities of the accused and then challenged him that if he continues to be so, namely, an informant, he would be killed. Then they left. The aggrieved party decided to give a complaint to the police on that incident in the evening at the sunset time. Accordingly, around 6.00 p.m., the deceased was proceeding to the police station in the company of P.W.s 1 to 3 to give a complaint. Enroute A-3 saw them and immediately went and brought the other accused. On A-1 pointing out P.W.1's husband saying "here goes Chitti (deceased)" A-3 caught hold of her husband's hand from behind. This was followed by A-1 and A-2 cutting on the head of her husband and A-7 also did not keep quiet since he also attacked on her husband's chest. All the accused broke soda bottles and with the broken bottles indiscriminately stabbed her husband. Her husband fell down dead with bleeding injuries. All the accused intimidated the witnesses by throwing soda bottles at them and chased them. After sometime, the witnesses gathered themselves and came back to the scene where they were informed by those present at the scene that her husband had been taken in an autorickshaw to the hospital. Immediately P.W.s 1 to 3 went to the Government Stanley Hospital in an auto where they were informed by the duty doctor that her husband has already died. Police came and took them to the police station where she was examined and as she was narrating the complaint the police reduced into writing; read it over to her and after she affirmed it to be correct, her signature was obtained in it. Ex.P-1 is the said complaint. M.O.s 1 to 4 are the weapons of offence used by the various accused during the commission of the crime.

4. P.W.13 is the investigating officer in this case. Around

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11.00 p.m. on 12.11.00 when he was in the police station, P.W.1 appeared before him and gave a complaint, which he registered in his police station crime No.1045/00 under Sections 147, 148, 302 and 506 (II) IPC. Ex.P-20 is the printed first information report prepared by him. He then commenced investigation. He reached the scene of occurrence and prepared Ex.P-21, the rough sketch and Ex.P-22, the observation mahazar. He examined P.W.s 2, 3 and others, who were at the scene, and recorded their statements. At 8.00 a.m. on 13.11.00 he conducted inquest over the dead body in the presence of panchayatadars and witnesses and prepared Ex.P-23, inquest report. During inquest he examined P.W.s 1 to 3 and others by recording their statements. Then he sent a requisition, Ex.P-24 to the hospital for conducting post-mortem. P.W.10 is the police constable, who identified the dead body in the hospital for post-mortem and produced the requisition for post-mortem. After post-mortem he handed over the dead body to P.W.1 after removing M.O.s 5 to 8, which he handed over to the investigating officer along with his report, Ex.P-17.

5. P.W.14 is the Assistant Professor of Forensic Medicine in the Government Stanley Hospital. Dr.Gururaj had conducted post-mortem on the dead body in this case. As he was dead, P.W.14 was examined to speak about the post-mortem conducted by Dr.Gururaj and his opinion as he was a co-professor along with Dr.Gururaj in the same hospital and was well acquainted with the handwriting and signature of Dr.Gururaj. Dr.Gururaj, during post-mortem, found various symptoms on the dead body as noted by him in Ex.P-41, the post-mortem report. The symptoms noted during post-mortem are as hereunder :-

> "Ante mortem Injuries :-
> 1) A spindle shaped gaping stab wound 2 x 1 cm x 3.5 cm on the back of the right wrist joint and lower third forearm. The injury has cut the right radius bone producing a deformity. The angles are acute and margins clean cut with tailing at its inner end. O/D : the underlying tissues found bruised.
> 2) 1 cms above and lateral to the injury No.1 an irregular incised like wound seen with both angles and margins irregular measuring 2 x 1 x 0.5 cms.
> 3) 2 cms lateral to injury No.1 a gaping stab wound 3 x 2 x 3.5 cms seen on the inner aspect of right forearm. It has cut through the underlying bone for 1 cms depth with bruising of underlying soft tissues. The angle of margins are irregular.
> 4) Spindle shaped gaping incised wound 3 xc 1.5 x 1 cm seen on the anterior aspect of right arm 4.5 cms above elbow joint, the angles are acute and margins clean cut.
> 5) 10 cms above injury (4) an oblique U shaped gaping stab wound 5 x 2 x 6 cms seen on the outer aspect of right forearm. The margins are clean cut. Upper

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angle acute and lower angle obtuse. The underlying tissues found bruised.
6) A gaping incised wound 3.5 x 1 x 1.5 cms seen 2 cms inner to injury (5). The margins and angles are irregular with bruising of underlying soft tissues.
7) A streak like incised wound 1 x 0.5 cm x cuticle deep seen on the middle third of outer aspect of right arm.
8) A gaping penetrating wound seen on the web space of left index finger and the index finger 3 x 1 cm cutting through and through the web space and the bones and soft tissues of the index finger. The angles and margins are clean cut with bruising and clinging clots.
9) A curved incised wound 4.5 x 0.5 cms and cuticle deep seen in the front of left chest close to shoulder joint and 4 cms below the top of shoulder joint and 4 cms below the top of shoulder with tailing on the outer part for 2 cms length.
10) A spindle shaped incised wound 1 x 0.5 x 0.5 cms seen on the left upper abdomen just below the lowest part of the rib cage casto-chondral margin. The surrounding tissues show bruising.
11) A gaping spindle shaped 3 x 1 x 5 cms stab wound seen on the middle of abdomen 6 cms above the umblicus. The margins are clean cut and angles acute.
12) 6 cms above injury (11) a gaping incised wound 5 x 3 x 2 cms seen on the left side abdomen 2 cms left lateral to midline. The margins and angles are clean cut.
13) 2 cms lateral to injury No.11 on the right side of abdomen 4 x 1 cm x viscera deep stab wound seen. The angles and margins are clean cut.
14) 8 cms right lateral and above the umblicus a gaping stab wound 3 x 1.5 x 4 cms deep with loops of contused intestines and fats protruding through it.
15) 6 cms below right nipple and 8 cms right lateral to midline, a spindle shaped gaping incised wound 3 x 1 x 1 cms seen with the margins abraded and angles acute.
16) 2 cms below injury No.15, an oblique gaping stab wound 3 x 1 cm x visceral deep seen on the right chest wall. The margins are abraded and angles acute and clean cut.
17) 14 cms right lateral to midline and 4 cms below injury (16) an abraded superficial streak like incised wound 0.5 x 0.5 cms and cuticle deep seen with tailing of the inner end.

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18) On the right lateral chest wall 18 cms below right axillary pit, a gaping penetrating stab wound 3 x 1 x visceral deep seen between the 8th and 9th ribs (intercostal space lateral curvature).
19) 23 cms below the right posterior axillary a gaping 3 x 5 x organ deep (7 cms) stab wound seen on the right lateral chest wall. The angles and margins are irregular.
20) An irregular wound 2 x 0.5 cms cuticle deep seen over the middle and lateral third of right clavicle.
21) An irregular gaping incised wound 3 x 1 x 1 cms seen below the left middle third clavicle and clavicular region with the margins acute and angles are sharp.
22) 2 cms above and inner to injury 20 and 21, 4 streak abrasions 3 x 0.5 cms x cuticular deep each seen on the left supra clavicular regions and left lower aspect of neck.
23) On the lateral one third of right eyebrow a spindle shaped incised wound 3 x 1 x 1 cms the angles and margins are sharp and underlying soft tissues found bruised.
24) A vertically placed incised wound 3 x 1 x 2 cms seen on the mid nasal bridge. The margins are irregular and it has cut through the nasal bones with clots adherent.
25) A superficial incised wound 1 x 0.5 cms x cuticle deep seen on the mid forehead 1 cms below the anterior hair margin.
26) A gaping incised wound seen on the vertex of head 7 x 1 cm x bone deep. The margins are clean cut. It has involved as a cut on the outer table and produced a radiating depressed fracture 2 x 1 cms with blood clots over the duramater.
27) 2 cms behind injury (26) a vertically placed incised wound 4 x 1 x bone deep seen on the right parietal region. The angles and margins are clean cut. It has involved the right parietal bone upto outer table.
28) A streak incised wound vertically placed 3 x 0.5 cms x cuticular deep seen on the right back of mid chest.
29) An irregular incised wound 4 x 1 x 0.5 cms seen on the right outermost part of the nape of the neck.
30) 2 cms above injury (29) an irregular incised wound 3 x 1 x 0.5 cms seen on the neck right side with tailing for 1 cms on outer aspect.

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O/D : Scalp)Injury 25, 26, 27) :

The mid frontal, mid parietal and right parietal scalp tissues show underlying bruising. The outer table over the right parietal bone show a cut fracture involving the outer table and the mid parietal bone shows a cut fracture involving the outer table and radiating depressed fracture 2 x 1 cms with extra dural hematoma below it.

O/D Abdomen (injuries 11, 12, 13 & 14) :

A stab wound injury (11) has produced bruising of the underlying soft tissues and produced a punctured wound over the small intestine 60 cms above the iliocaecal junction with blood and blood clots extending anteriorly. The direction is downwards and inwards.
The stab injury (13) has produced an irregular laceration over the underlying right lobe of liver 3 x 1 x 2 cms with blood clots adherent. The direction is inwards, downwards and laterally.
The stab wound injury (14) has produced a contusion 3 x 2 x 1 cms just close to the omental tear.

O/D Chest (Injury 16) :

The stab wound has cut through the 6th and 7th intercostal space obliquely without involving the ribs and produced a clean cut to the underlying lung 2 x 1 x 1 cms with clots of blood adherent. Right lung shows partial collapse with 100 ml of clotted blood in thoracic cavity. The direction is inwards and forwards.
(Injuries 18 & 19) : It has cut through the 9th and 10th intercostal spaces lateral curvature for a depth of 7 cms producing a cut over the 9th rib and cut through the lower lobe of lung, right lobe of liver, diaphragm irregularly. The direction is downwards, forwards and inwards.
Heart : Intact. NAD. c/s contains few ml of fluid blood.
Lungs : Right lung partially collapsed c/s pale.
Stomach : Intact - c/s contains 10 mg of fully digested food material. Pungent odour. Mucosa pale.
Liver, Spleen & Kidneys : c/s pale.
Intestines : Contain yellowish chyme.
Pelvis & Spinal column : Intact."

As per the post-mortem report, death appears to have occurred as a

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result of shock and haemorrhage due to multiple injuries. Ex.P-40 is the requisition received at the hospital for conducting post-mortem.

6. P.W.13 continued his investigation further. He examined P.W.12, the doctor before whom at 7.30 p.m. on 12.11.00 an unidentified dead body of a male was produced. P.W.12 would state that an unidentified dead body of a male was brought before him at 7.30 p.m. on 12.11.00 and finding the person already dead, he sent the dead body to the mortuary and informed the resident medical officer. Ex.P-19 is the accident register issued by him. P.W.13 arrested A-4 and A-5 on 13.11.00 in the presence of witnesses and examined them. Each one of the arrested accused gave a voluntary confession statement. The admissible portion of the confession statement of A-4 is Ex.P-25 and Ex.P-26 is the admissible portion of the confession statement of A-5. Pursuant to the respective confession statements, weapons of offence came to be recovered under Exs.P-27 and P-28 in the same evening attested by witnesses. On the occurrence day itself, from the scene of occurrence, P.W.13 recovered bloodstained earth and sample earth under Ex.P-29 and broken soda bottles under Ex.P-30. At 12.30 p.m. on 14.11.00 P.W.13 arrested A-6 in the presence of witnesses and examined him. He also confessed and the admissible portion of the confession statement of A-6 is Ex.P-31. Pursuant to Ex.P-31, a broken soda bottle came to be recovered under Ex.P-32 attested by witnesses. At 4.30 p.m. on 17.11.00 P.W.13 arrested A-3 in the presence of witnesses and examined him. A-3 also gave a voluntary confession statement. On 20.11.00 P.W.13 took out an application to get A-1, A-2 and A-7 into police custody, which was accordingly given. During police custody he examined them. A-1, A-2 and A-7 gave separate confession statements, the admissible portion of which are Exs.P-34, P-36 and P-38 pursuant to which the weapons of offence came to be recovered under Exs.P-33, P-35 and P-37. The accused and the incriminating objects recovered at the instance of the accused were brought to the police station. The accused were surrendered in court on the expiry of police custody for continuation of judicial remand and the case properties were sent to court in Form-95/Ex.P-39. On 12.11.00 P.W.13 came to know that A-2 is admitted in the hospital and, accordingly, he proceeded to the hospital and collected the accident register. P.W.13 was then transferred and he was succeeded by P.W.15.

7. P.W.s 2 and 3 had given evidence on the occurrence proper as spoken to by P.W.1. P.W.4 would depose that at about 3.00 p.m. on 12.11.00 he saw the accused on the one hand and the deceased on the other hand quarrelling and when he returned home he came to know that Chitti – since deceased, had already died. P.W.5, examined as an eye witness to the occurrence, turned hostile. P.W.6 speaks about the quarrel that took place at about 3.30 p.m. on 12.11.00 between the deceased on the one hand and A-1 on the other. A-1 was quarrelling with Chitti (deceased) accusing him of being an informant to the

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police. P.W.7 examined to prove the recovery mahazar and observation mahazar had admitted his signatures only in those two documents. Ex.P-3 is the signature in the observation mahazar and Ex.P-4 is the signature in the recovery mahazar. P.W.8 examined to prove the examination of A-1, A-2 and A-7 during police custody turned hostile. However, he had admitted his signatures in those statements, which are marked as Exs.P-5 to P-10. P.W.9, examined for the same purpose as P.W.8 was examined, has admitted only his signatures in the various documents and his admitted signatures are marked as Exs.P-11 to P-16. P.W.11 is the Magisterial Clerk, who speaks about the receipt of the case properties and sending the same to the laboratory for chemical examination. He also states that the report from the laboratory had come (and it must be noticed that neither the chemical examiner's report nor the serologist's report is marked in this case. Ex.P-18, the requisition given by the investigating officer to subject the case properties for chemical examination alone is marked). P.W.15, after completing the investigation and complying with all the other legal formalities, filed the final report in court against the accused on 24.11.01 for the offences referred to earlier.

8. When the accused were questioned under Section 313 Cr.P.C. on the basis of the incriminating materials made available against them, they denied each and every circumstance put up against them as false and contrary to facts. As noted earlier, neither oral nor documentary evidence was brought before the court at their instance.

9. Mr. V.Gopinath, learned senior counsel appearing for the appellants would submit that though the evidence of P.W.s 1 to 3 is just a parrot-like repetition, yet from the fact that a delay had occurred in giving the complaint would raise a suspicion in the mind of this Court as to whether any credibility at all could be given to the evidence of P.W.s 1 to 3. In elaborating this point, learned senior counsel took us through the various materials available on record, which according to him are in favour of the accused and requested us to disbelieve P.W.s 1 to 3 and acquit the accused. Opposing these arguments advanced by the learned senior counsel, Mr. N.R.Elango, learned Addl. Public Prosecutor would contend that the delay in giving the complaint in every case by itself would not be fatal to the prosecution case if it is found that there are trustworthy evidence of eye witnesses to the occurrence. Learned Addl. Public Prosecutor took considerable pains in convincing us that the evidence of P.W.s 1 to 3 is wholly reliable and, therefore, that evidence could be accepted in favour of the State by ignoring the delay in giving the complaint. To substantiate this argument, learned Addl. Public Prosecutor took us through the materials on record.

10. Having regard to the submission made by the learned senior counsel for the appellants and the learned Addl. Public Prosecutor

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for the State, we had gone through the entire materials placed before us carefully. Before proceeding to discuss the merits and demerits of the prosecution case, we would like to remind ourselves as to what the Supreme Court has often been saying about the duty of the court in analysing the case materials placed before it :-

> "No court should be hyper-sensitive to each and every doubt that arises in a prosecution case as they are bound to be there; every semblance of a doubt or a suspicious circumstance, unless they go to the root of the prosecution case itself and has the effect of disturbing the very fulcrum of the prosecution case, the court should not, on such doubts or circumstances, magnify it out of proportion to give the benefit of the same to the accused; the court has not only a duty to see that innocent persons are not convicted but also has a more responsible duty to the society, namely, not to give a judgment of acquittal, which are totally unwarranted on the facts of the case that come up for consideration; the society shall not be exposed to the perils at the hands of criminals and offenders by acquitting the accused on whimsical reasons and fantasies; delay in either filing the complaint or delay in transmitting the case records to the court by themselves would not be fatal to the prosecution case and how far such delay would affect the prosecution version would depend upon the facts of each case."

These are the broad principles evolved by the Supreme Court, which have to be followed by every court of law whenever a case involving criminals and grave offences come up before the court for consideration. Having the above principles evolved by the Supreme Court in our mind, we now proceed to analyse the case materials.

11. There are three eye witnesses in this case, namely, P.W.s 1 to 3. Their evidence before the court on the occurrence proper is just a parrot-like version. We have no doubt in our mind, that simply because the witnesses speak in unison regarding the occurrence proper, that would not be a ground to suspect their evidence. In many cases when the evidence of the witnesses, who speak about the occurrence are found to be trustworthy, cogent, natural, convincing and wholly reliable, this Court never had any hesitation in acting upon that evidence whatever may be the delay that had occasioned in giving the complaint or the delay committed by the police in transmitting the case records to the court. In this case, there is no dispute that the evidence of P.W.s 1 to 3, ex-facie, establish the involvement of all the accused in the crime. If that is the only approach which this court should take on the materials available in this case, then there cannot be any difficulty at all in confirming

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the conviction. Mr. V.Gopinath, learned senior counsel, as already contended, would submit that simply because the evidence of P.W.s 1 to 3 establish the involvement of the accused in the crime, it does not necessarily mean that the court should ignore the surrounding/attendant circumstances to the crime; the conduct of the parties, who had witnessed the crime both immediately after seeing the crime and thereafter in lodging the complaint with the police and the further acts or omissions committed by the police in investigating the crime. Since the prosecution case is attacked solely on four grounds, namely --

> "(a) the conduct of P.W.s 1 to 3 after allegedly seeing the crime ;
> (b) the delay in giving the complaint ;
> (c) the inherent materials available in the complaint itself showing its artificiality and further showing that P.W.1 would not have been the author of the contents of the said complaint ; and
> (d) the delay committed by the police in transmitting the case records to the court."

In addition to the above, an argument is advanced that Ex.P-1 could not have been the earliest information that would have come into existence in this case. It is candidly admitted by the learned senior counsel that if the above points are answered in favour of the State, then this Court has to fall back on the evidence and appreciate it on its merits.

12. Having regard to the grounds of attack on the prosecution case as enumerated above, we are of the considered opinion that it is better to apply our minds consolidating those points before we step into the next stage of analysing the oral evidence of P.W.s 1 to 3. The prosecution case, in sum and substance, is that at about 3.00 or 3.30 p.m. on 12.11.00, the accused barged into the house of P.W.1 and her husband (who is the deceased in this case) and found fault with him for being an informant to the police and then they left the place stating that if he continues to be the informant, he would be killed. It is the further case of the prosecution that on this alleged threat to the life of P.W.1's husband, it was decided in unison that they will have to go to the police station to give a complaint only late in the evening and, accordingly, at about 6.00 p.m. they were (P.W.s 1, 2, 3 and the deceased) on their way to the police station and enroute the assault had taken place. Therefore, it is clear that in respect of the occurrence in the afternoon as referred to above, no information whatsoever came to be lodged with the police at all and only for the first time the prosecution party and the deceased were on their way to the police station only at about 6.00 p.m. on that day to give a complaint. The occurrence, according to the prosecution, had taken place at about 6.00 p.m. on 12.11.00. According to the evidence of P.W.13, the investigating officer, P.W.1 appeared before him at 11.00 p.m. on 12.11.00 and gave a complaint,

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which he registered in crime No.1045/00 for the offence referred to earlier. P.W.13 does not even say that he reduced into writing the complaint narrated to him by P.W.1. On the other hand we find that P.W.1 had deposed that in the police station as she was narrating the complaint, a constable reduced it into writing; read it over to her; it was found to be correct and then she signed. Therefore, even at this stage we wish to point out that there is an apparent doubt as to whether P.W.1 gave a complaint, which was already prepared at the police station, (which alone we could visualise from the evidence of P.W.13), or was it a complaint narrated orally by P.W.1 at the police station, which was reduced into writing as referred to above, which is the evidence of P.W.1. In a grave crime like this, the court expects reasonable evidence from the investigating officer as to how and in what manner the complaint had come to be given. On the other hand, we find that his evidence is in direct conflict with the oral evidence of P.W.1 (though impliedly), and, therefore, it is not possible for this Court to doubt as to whether Ex.P-1 is the complaint which was given by P.W.1 or is there anything else. Therefore, we went through the contents of Ex.P-1. The first half of the complaint speaks about the incident. The second half of the complaint reads as hereunder – the translation in English is by us :-

> "When the witnesses were shouting, A-1 turned around and wielding a knife and hurling abusive words, threatened them not to near and if they do they would be stabbed; the rest of the accused broke soda bottles which they had in their hand on the road and on seeing that, people who were coming by that side got panicky and started running helter-skelter; those who were coming in their cycles, leaving their vehicles on the road, ran out of sheer fear; the nearby shop owners pulled down the shutters of their shops and then ran; the entire traffic has come to a stand still."

The above extracted materials are often made available in a case whenever a sponsoring authority sends a proposal to the detaining authority to detain a person as a goonda under Tamil Nadu Act 14 of 1982. We have no doubt at all that P.W.1 being an illiterate lady and that too belonging to scheduled caste could not have had so much of clarity in her mind to give the above referred to extracted detail in Ex.P-1 itself, which, as we have already stated, are always reflected in the grounds of detention detaining a person as a goonda under Tamil Nadu Act 14 of 1982. Therefore, we are satisfied that the above referred to contents of Ex.P-1 could not have been from the mouth of P.W.1. If that is so, who is the author of those contents in Ex.P-1. Could we say it is P.W.13 or is it possible to hold that some other person other than P.W.1 or P.W.13 could have put those contents in Ex.P-1 about which P.W.1 would not have had any knowledge at all. We would have simply ignored the above extracted portion of

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Ex.P-1 from our consideration if there are other weighty circumstances in favour of the State. But, however, since we find that there are so many suspicious circumstances surrounding Ex.P-1, we have taken note of the above extracted contents of Ex.P-1 to hold that the contents of Ex.P-1 smacks of artificiality at its face.

13. Probably, the contents could have been incorporated in Ex.P-1 to explain the delay in lodging the complaint with the police. Testing that explanation as found in Ex.P-1 in the context of the oral evidence of witnesses in court, we do find that even then the delay is not satisfactorily explained and the alleged panic stated to have been created by the accused by their acts of vandalism vanished in toto from the scene, in any event, within 5 or 10 minutes. We get support for our above conclusion from the oral evidence of P.W.1. She had admitted in her evidence in cross as hereunder :-

> "Five minutes after the occurrence we reached the hospital; during that five minutes interregnum I was only at the crime scene; during that period P.W.s 2 and 3 also stayed with me; for the entire period of five minutes we were at a distance of twenty feet; from the scene of occurrence before going to the hospital we did not go elsewhere; immediately after the occurrence all the accused ran for safety but I do not remember in which direction they ran; all the accused ran immediately after my husband received cut injuries."

It must be noticed that P.W.1 had stated in her evidence that by hurling soda bottles the witnesses were chased and after sometime they returned to the crime scene. P.W.2 had also deposed that as the witnesses were crying, A-3 broke a soda bottle on the road and as the assailants were proclaiming that they also should be cut, they ran to a distance of twenty feet from the scene of occurrence and screened themselves behind a cart. P.W.2 had also deposed that the witnesses reached the scene after sometime where they found the injured not available. P.W.3, the other eye witness had also deposed that out of fear the witnesses ran for safety and after sometime they returned to the scene and on enquiry the witnesses were informed that the injured was taken to the hospital. Therefore, it is clear that after creating a scene at the scene of occurrence, assuming the accused have created, the assailants ran away and the witnesses reached the scene of occurrence within a short time thereafter. If that is so, we fail to understand as to why any of them, namely, P.W.s 1 to 3 did not choose to go to the police station to give the complaint immediately, in any event within a reasonable time after the crime. P.W.2 had also admitted in his evidence in cross that in close proximity to the scene of occurrence there is a police booth. If really the occurrence had taken place in the manner spoken to by the prosecution and when there is no contra evidence let in by the State that there is no police booth at all near the crime scene, we fail to

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understand as to how the commission of the crime would have escaped the attention of the police personnel manning the police booth, which is shown to be in close proximity to the crime scene. P.W.1 in her evidence had also admitted as hereunder :-

> "From the crime scene it will take five minutes to reach the investigating police station; the police station is on the northern side of the crime scene and within five minutes after the crime I reached the hospital."

From Ex.P-20, the printed first information report, we could see that the police station is at a distance of half a kilometre from the crime scene. P.W.1 had further admitted that it will take fifteen minutes for one to reach the hospital from the scene. Therefore, the police station being located at a distance of half a kilometre from the crime scene could have been reached by P.W.s 1, 2 or 3 or anybody else from the hospital, if they had really gone to the hospital, as they have stated, atleast within a period of thirty minutes or so. But that was not happening at all.

14. In this case, the evidence of the prosecution is that the complaint had come to be given for the first time only at 11.00 p.m. on 12.11.00. P.W.1 in her evidence in chief had stated that after she reached the hospital she was informed that her husband had died and police took them to the police station and enquired where she gave the complaint. But, however, we find on a careful analysis of the entire materials on record, there is nothing to indicate that the police received any information from the hospital, which alone would have enabled them to go to the hospital for the purpose of enquiring the witnesses. P.W.12 is the medical officer before whom the dead body of the male concerned in this case was brought at about 7.30 p.m. on 12.11.00 and Ex.P-19 is the accident register. It does not even show that he had sent any intimation to the police about the medico-legal case nor P.W.13, the investigating officer would depose that he received any intimation from the Government Hospital on the basis of which alone the police had gone to the hospital. It must be noticed that P.W.13 nowhere stated that any police personnel from his police station had gone to the hospital either for the purpose of enquiring P.W.1 to register a complaint or with a view to bring any one of them from the hospital to the police station to have a complaint registered. On the other hand, as we have already noted, the evidence of P.W.13 shows that when he was on duty at the police station, P.W.1 appeared and gave a complaint, which means that P.W.1 appeared on her own without being accompanied by any police constable. This evidence of P.W.13 runs contra to the oral evidence of P.W.1 that from the hospital she was taken to the police station by a police constable.

15. We are not saying for a minute that simply because the witnesses to the occurrence, which includes the close relatives of

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the deceased (in this case P.W.s 1 to 3 are closely related to the deceased) did not act in any particular manner as is expected of a citizen of ordinary prudence, their evidence should be discarded. In other words, we have no doubt at all in our mind that the evidence of any eye witness to the occurrence cannot be brushed aside simply because they did not rush to the rescue the victim or did not rush the injured to the hospital or did not rush to the police station immediately to lodge a complaint. In other words, in our considered opinion, how far the conduct of the witnesses, who had seen the crime could be taken into account to doubt the credibility of their evidence in court would again depend upon the facts available in each case. Having that in our mind, we went through the evidence of P.W.s 1 to 3. P.W.1 is the wife of the deceased. P.W.2 is the younger brother of the deceased. P.W.3 is the elder sister of P.W.1. Therefore, they are closely related to the deceased and we are not finding fault with them in not making any attempts at all to rescue the victim in this case during the onslaught or from rushing him to the hospital. Really if they have seen a crime, then they have seen a ghastly crime committed on one of their very close relative and, therefore, they would have been definitely in severe shock. How soon a person would come out of such a shock would vary from individual to individual and, therefore, giving allowance to P.W.s 1 to 3 that they were not able to respond immediately on seeing the ghastly crime for quite sometime, we address ourselves the question as to whether the delay of nearly five hours in giving the complaint should be held to be a reasonable lapse of time for P.W.s 1 to 3 to come out of their shock and shall act in a manner, which is expected from a person, who had seen the crime. Our answer would be in the negative because of the following reason. P.W.s 1 to 3 had clearly deposed that within a short time after the crime, they reached the hospital where they were informed that the victim has already died. The evidence of P.W.1 shows that her husband died at the spot itself. Therefore, it is clear that she could have regained her confidence and composure after sometime and we will assume half an hour or forty-five minutes, to the advantage of the prosecution, after seeing a ghastly crime. They why had she not or why not P.W.s 2 or 3 or anyone of them, gone to the police station immediately thereafter to inform about the crime. We have already noted that P.W.2 had admitted in his evidence in cross that in close proximity to the crime scene there is a police booth. It is not the case of the prosecution that at the time of the crime there was no police personnel manning the said police booth. The area in which the crime is shown to have been committed is a crime prone area and, therefore, the police would always be on a tight vigil throughout the day and that is the reason, probably, a police booth was located away from the police station to monitor the moving people. In these circumstances, the admitted explanation put in the mouth of P.W.1 by giving certain details in Ex.P-1, which we have already extracted, do not satisfy us at all, to show that the delay in giving the complaint stands reasonably explained. It is all

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the more so, since we find from the evidence of P.W.s 1 to 3 that they have regained their composure within a short time and reached the hospital also. Therefore, the delay of nearly five hours in lodging the complaint with the police assumes considerable importance in this case.

16. One other material, which disturbs us in this case is the evidence of P.W.1 where she had stated that after the occurrence in the house on 12.11.00 around 3.30 p.m., police personnel, Balu, Sub-Inspector of Police and Murali from the investigating police station came to the house at 4.00 p.m. She had also admitted that she did not know on whose complaint the Sub-Inspector of Police had come to the scene. P.W.13, the investigating officer, had also admitted in his evidence in cross that on the occurrence day, in the investigating police station, Sub-Inspector of Police, Balu and Murali were on duty. P.W.13 nowhere states that he had any information regarding the occurrence that is shown to have taken place at 3.00 or 3.30 p.m. on 12.11.00 in the house of P.W.1 when all the accused are shown to have appeared and criminally intimidated the victim of dire consequences if he continues to be the informant to the police. In this context we refer to the evidence of P.W.4, who states that at about 3.00 p.m. he saw the accused on the one hand and the deceased on the other hand quarrelling. Therefore, there is no doubt at all that an occurrence had taken place in the house of P.W.1 at about 3.00 p.m. as spoken to by her. If that is so, the presence of the police personnel, Balu and Murali at the house of P.W.1 at about 4.00 p.m. should have been explained by the investigating officer to the satisfaction of the court, which he had miserably failed to do. P.W.2 is aged about thirty-three years and he is a male. In his evidence in cross, he had stated that by 6.30 or 7.00 p.m. on the occurrence day, he reached the hospital where he was there till about 10.30 p.m. By 9.00 p.m. itself many people known to him were in the hospital and none of them asked him to go and give a complaint to the police. P.W.3 also admitted in her evidence in cross that after the witnesses reached the hospital, innumerable people from their area have come to the hospital. These materials make us wonder as to why when so many people were present, body and soul, in the hospital, yet none chose to go to the police station to give the complaint before 11.00 p.m., as spoken to by the prosecution now before court. In these circumstances, we have no doubt at all that the State had not explained satisfactorily the delay of five hours in lodging the complaint with the police, which delay raises a serious doubt in our mind as to whether P.W.s 1 to 3 could have seen the occurrence at all and assuming they have seen, whether P.W.1 would be the author of the contents of Ex.P-1.

17. In this context, we again refer to the evidence of P.W.12, the duty medical officer before whom the dead body of the husband of P.W.1 was taken. He had stated in his evidence in cross that one

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person brought the dead body and he enquired him about the details, but he did not divulge any details at all. This again shows that there is something fishy about the entire crime and whether anyone could have seen the crime at all or the crime was committed in total secrecy without being witnessed by anyone. In addition to the above, we find that the complaint shown to have been registered at 11.00 p.m. on 12.11.00 had reached the court only at 5.00 a.m. on 13.11.00. When the police is shown to have chosen to send the case records to the Magistrate at his residence itself, we see no reason at all as to why the police officer had not taken any steps to see that the case records reached the residence within a short time after it was registered. It is not as if the police station is out of city limits. The police station is in the Chennai city Corporation limits itself. It is not the case of the prosecution that for want of transport facility or for any other reason the case records stated to have been prepared at about 11.00 p.m. could not be sent to the Magistrate at his residence before 5.00 a.m. This is yet another circumstance to doubt as to whether the prosecution is holding back the truth. In such circumstances, when the delay in lodging the complaint looms large with a telling impact in our mind, the question that falls is whether all the persons arrayed as accused were involved in the crime or is there a possibility of false implication. P.W.s 1 to 3 uniformly speak about the involvement of all the accused in the crime. When we are doubting the very origin of the prosecution case based on suspicious circumstances in the recording of Ex.P-1, we are unable to draw a line in the prosecution case to find out which part is true and which part is false. It would be a herculean task for us to take up that process and decide the truth or falsity of the prosecution case from any particular angle. In other words, it is next to impossibility to decide, which portion of the prosecution case is false and which portion of the prosecution case is true, which deserves acceptance. That would be a very difficult task for us, as already stated. In MARUDANAL AUGUSTI - Vs - STATE OF KERALA reported in AIR 1980 SC 638, the Supreme Court had occasion to consider what would be the position if the very basis of the prosecution case, namely, the complaint is doubted. In deciding that case, the Supreme Court held as hereunder :-

> "The High Court seems to have overlooked the fact that the entire fabric of the prosecution case would collapse if the F.I.R. is held to be fabricated or brought into existence long after the occurrence and any number of witnesses could be added without there being anything to check the authenticity of their evidence."

In these circumstances, giving our anxious consideration to the entire materials on record; with deep anguish in our mind and noting that by this judgment one or two real culprits may possibly escape the clutches of law and finding that we are helpless in a situation like this, we are inclined to give the benefit of our discussion to

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the appellants, though the evidence of P.W.s 1 to 3, if accepted, establish the involvement of the accused in the crime. In other words, going by the Supreme Court judgment referred to supra, we hold that there is nothing to test the authenticity of their evidence.

18. In the result, the criminal appeal is allowed. The conviction and sentence imposed on A-1 to A-7 by the trial court is set aside and they are acquitted of all the charges framed against them. It is reported that A-1, A-2 and A-4 to A7 are in jail and that A-3 is on bail in connection with this case. The conviction and sentence imposed on A-1 to A-7 in S.C. No.282 of 2001 on the file of the Addl. Sessions Judge (Fast Track Court No.3), Chennai, and who are lodged in Central Prison, Vellore, are set aside and A-1, A-2 and A-4 to A7 are directed to be released forthwith unless their presence is required in connection with any other case. Bail bonds executed by A-3 shall stand cancelled.

GLN

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1) The Addl. Sessions Judge, Fast Track Court No.III, Chennai.
2) -Do - Thro' The Prl. Sessions Judge, Chennai.
3) The XV Metropolitan Magistrate, George Town, Chennai.
4) -Do - The Chief Metropolitan Magistrate, Egmore, Chennai.
5) The Superintendent of Police, Central Prison, Vellore.
6) The District Collector, Chennai.
7) The Director General of Police, Chennai.
8) The Public Prosecutor, High Court, Madras.
9) The Inspector of Police,
H-6, Dr.Radhakrishnan Nagar Police Station,
Chennai.

ONE CC TO MR.L. MAHENDRAN, ADVOCATE (SR 31740)

CRL. A. NO. 388 OF 2004

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